

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA

Norman Tyrone Dais, #327115)	C/A No. 8:09-1064-JFA-BHH
)	
Plaintiff,)	
vs.)	ORDER
)	
Melanie Huggins, Horry County Clerk)	
of Court,)	
)	
Defendant.)	
_____)	

The plaintiff, a state prisoner proceeding *pro se*, brings this action pursuant to 42 U.S.C. § 1983. He contends that the defendant violated his Sixth Amendment right to counsel regarding prior state court convictions and seeks declaratory relief from this court.

The Magistrate Judge assigned to this action¹ has prepared a comprehensive Report and Recommendation wherein she recommends that the complaint should be dismissed without prejudice. The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation.

The plaintiff was advised of his right to file objections to the Report and Recommendation, but he has failed to do so within the time limits set forth in the Report.

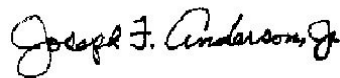
The Magistrate Judge correctly opines that a challenge to plaintiff's state court convictions must be pursued through habeas corpus relief under 28 U.S.C. § 2254, not by seeking declaratory relief under 42 U.S.C. § 1983.

¹ The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

After carefully reviewing the applicable law, the record in this case, and the Report and Recommendation, the court finds the Magistrate Judge's recommendation fairly and accurately summarizes the facts and applies the correct principles of law. The court, therefore, adopts the recommendation of the Magistrate Judge in full and incorporates this Report by specific reference.

Accordingly, this action is dismissed without prejudice and without issuance and service of process.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "Joseph F. Anderson, Jr." in a cursive script.

June 10, 2009
Columbia, South Carolina

Joseph F. Anderson, Jr.
United States District Judge